

**909.104-3 Application of standards.
(DOE coverage-paragraph (e))**

(e) DOE may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

[64 FR 16651, Apr. 6, 1999]

**Subpart 909.4—Debarment,
Suspension, and Ineligibility**

SOURCE: 61 FR 39857, July 31, 1996, unless otherwise noted.

909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE approved subcontracts and subagreements.

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE debarment and suspension actions; and

(c) Implements and supplements FAR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE on or after the effective date of this subpart.

Nonprocurement debarment and suspension rules are codified in 10 CFR part 1036.

909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The Debarring Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Debarring Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

Suspending Official. The Suspending Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Suspending Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

[69 FR 75003, Dec. 15, 2004]

909.406 Debarment.**909.406-2 Causes for debarment. (DOE coverage—paragraphs (c) and (d))**

(c) The Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a DOE contractor. Such cause may include but is not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract; and

(2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

(1) On the basis that an individual or organization is an affiliate of a debarred contractor, subject to the requirements of FAR 9.406-1(b) and 9.406-3(c);